

# Profile of a Death Row Prisoner

Bekker, J. (1989). *Profile of a Death Row Prisoner*. Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 6, 27 July.

**Jo-Ann Bekker** is a former researcher for the [Black Sash](#).

**Date:** 27 July 1989

**Venue:** [University of the Witwatersrand](#), Johannesburg, South Africa

This paper draws on the Black Sash publication *Inside South Africa's Death Factory* (February 1989) which I was commissioned to do by the Sash. I approached the task as a journalist, but benefitted greatly from Jacklyn Cock's guidance and insights. The following people assisted me in interviewing relatives of death row prisoners: Barbara Orpen, Paula Leyden, Brigitte Clark, Judy Chalmers, Euralia Banda, Cindy Deutschman, Mteleli Pobana, NS Sonamzi and Jerome Brauns.

## Introduction

A full 97% of the 1070 people executed on Pretoria's gallows between 1980 and 1988 were black – 76% were Africans, 29% "coloureds" and 0.2% Asian.<sup>1</sup> The fact that the overwhelming majority of death row's inmates come from the country's most disadvantaged group is not coincidence. For most black South Africans, the journey from a segregated township to the death cells can be described in terms of the "spiral of violence" to which Jacklyn Cock has referred.<sup>2</sup>

In the first place, most black death row inmates have been at the receiving end of the "structural violence" of oppression and exploitation. Secondly, the crimes for which many were sentenced to death can be described as "reactive violence". These would include crimes often regarded as "political", such as mob attacks on suspected state collaborators and guerrilla attacks, and a fair proportion of "ordinary" murders, for example alcohol-induced attacks. Finally, capital punishment is increasingly viewed as a form of "repressive violence" by the state.

My research project attempted to make a beginning at establishing whether structural violence did in fact play a significant part in the upbringing and experiences of those on Pretoria's death row. The project sought to construct a profile of the condemned prisoner. In order to establish biographical details, relatives and friends of 26 people on death row in 1988 were interviewed. The project also attempted to assess the legal road people had travelled to death row. Records were examined of the trials in which 40 people (including the 26 in the first sample) were sentenced to death. The samples

drawn on were small, but it is hoped that the project is nevertheless a useful initial venture into an uncharted territory.

### The People Behind the Statistics

A typical death row inmate, according to the first sample, is African, male, and in his early 20s. He grew up in a poor, overcrowded home, was raised by a single parent or by relatives, left school without matriculating, and found work as an unskilled or semi-skilled labourer.

To give details: 92% of the prisoners were black (77% were African and 15% were coloured) and 8% were white. There was only one woman in the sample. A total of 77% were younger than 30 in February this year. Most, 58%, were in their early 20s. 19% were in the 26-30 age group and 15% were in their early 30s. Only 8% were in their 30s. As 39% of the sample were in their second year on death row, it is more telling to note that 77% of the sample were younger than 25 when they committed the crime for which they were sentenced to death. 35% were in the 18-20 age group and 15% were in their early 30s.

The vast majority of the sample (85%) grew up in families which struggled financially. The brother of Mzondeleli Nondula, who was sentenced to death in the Messina terrorist trial, recalled:

**The hardest part was having to go to school everyday on an empty stomach. Our father was stabbed to death when Mzondeleli was four years old. Our mother worked as a domestic worker and could not afford to pay the accounts. The furniture company came to repossess the furniture and we had to sleep on the floor. We used clothes as mattresses.**

Overcrowded living quarters were the norm. A total of 88% shared a house with five to 10 people. Four percent lived with more than 10 people. Only eight percent lived with fewer than four people. Nondula's fellow trialist, Mthetheleli Mncube, told the trial court that 12 people had shared his parents' three-roomed home in Alexandra, north of Johannesburg:

**The boys spent the night in the kitchen. The girls spent the night in the small dining room. The only toilet was a bucket in the yard outside. But it, and the single tap in the yard, had to serve five other families who were also living in the yard.**

Only one (white) person's family had the financial means and space for eight people to live together comfortably.

The majority of death-row prisoners in the sample (58%) were raised by single parents or by other relatives. Reasons for this included illegitimacy, divorce or separation, death, and migrancy. Only 42% were raised by both parents. Rodney Moloi, who was born in Meadowlands, Soweto, was brought up by his aunt and uncle who ran a shebeen from their Thembisa home. At least nine people lived there. Moloi was his parents' only child, but his mother said they could not offer him a stable home. "For the first 14 years of his life we lived as sub-tenants. It was one month here, the other there," she said. In 1977 when she was finally allocated a home in Soweto, and Moloi came to live with them, her husband died.

A full 92% of the sample did not matriculate. 23% passed Standard 4 or 5; 42% completed Std 6 or 7; and 27% passed Std 8 or 9. Of those who did not complete their schooling, 54% left because of financial problems.

Sixty-two percent of the sample were in full-time employment at the time of their arrest, while 27% had part-time work. Of those employed, 65% had unskilled jobs (as security guards and as factory, farm and mine workers); 35% were in semi-skilled positions (working as a cook, a driver, and as welders and machinists). Two men in the sample were self-employed. Ismail Mokghethi earned about R3 000 a month hawking food in Soweto and Dimitrios Skoularikis was a wealth financier. Rodney Moloi's experience illustrates the obstacles many faced on entering the job market with no qualifications. He left school after Std 5, at the age of 15, and did odd gardening jobs while waiting for his reference book to be issued. Once he received his "pass", and could legally apply for work, he was able to find employment only as a packer. For about three years he did odd packing jobs at a company which manufactures explosives. His mother said he lost two teeth when a gas cylinder he was handling burst its cork and hit him in the mouth. Before his arrest he had a full-time packing job at a steel plant and earned R85 a week.

As most people in the sample were young, the majority (77%) were single. Only 19% were married and only 4% were divorced. Less than half (46%) had no children; 27% had only one child; 19% had two children, and only 8% had three to four children.

According to relatives interviewed, only 23% of the sample carried a weapon, and only 38% regularly consumed alcohol.

Just over half of the people in the sample (54%) belonged to a political or community organisation. Most belonged to United Democratic Front-affiliated groups. Three guerrillas in the sample belonged to the African National Congress. And Henry Burt, the first white to be convicted of the "necklace" murder of a black man, was a member of the Civil Defence League in Erasmia, Pretoria.

Only 15% of the sample had been detained without trial as a result of their political activities. However, others had been deeply affected by their involvement in conflict situations with the security forces. Messina trialist Mncube saw police shoot dead two of his friends in the 1976 Soweto riots. "From that time onwards Thethe was never the same," his father said. Henry Burt assaulted an officer while doing his military training, a psychologist told the trial court, and was sent to the Greefswald army corrective centre for six months.

Several people in the sample made their strong political views known during their trials. ANC guerrilla Robert McBride, sentenced to death for the Durban bomb attack in which three women died, said he hated being classified "coloured":

**Its actually like being a dirty work. Its like white paint that's been exposed to dirt or something and its become coloured ... . The thing of racialism must be destroyed.**

He felt that the nationwide State of Emergency imposed in 1986 was a "blatant declaration of war ... on the black population."

A significant proportion of the sample of 40 inmates (42%) had previous convictions. And 47% of this number had been prosecuted for the first time when they were younger than 18. A total of 32% had served jail sentences.

John Pegg, national director of the National Institute for the Rehabilitation of Criminal Offenders, said there were three vital factors which determined whether someone who left jail would be rehabilitated or not: He or she must have access to food, housing and employment. If one of these factors were missing a former prisoner would have "no option but to commit another offence-even one as minor as trespassing," Pegg said.

Jabulani Nkosi (who was executed a week after the report was launched) was first arrested and convicted at the age of eight. Before he was 18 he had received three sentences of corporal punishment. He was never defended by a lawyer and never sent to a reformatory. Nkosi's cousin Mahlambi said he watched him grow more hardened and more bitter after each beating. Nkosi went to jail for the first time when he was 18, for stealing cigarettes, sweets and clothes. In the next nine years he was to spend little more than a year outside prison walls. He was jailed for theft and for breaking his parole. Four months after his release in June 1985 he broke into a Brakpan flat, brutally murdered an 84-year-old man who lived there, and stole a television set and other items. This time he was sentenced to death.

Patrick Manginda of Oudtshoorn was 10 when he was convicted of stabbing another boy during a fight. He was sentenced to cuts with a cane. Several years later he was convicted of stealing a packet of cigarettes and was again sentenced to a beating. After he turned 18 he was jailed for three months for assault. He was next arrested for stealing planks, but was release on bail. Three days later he was arrested in connection with the mob attack in which the chairman of the community council had died. He was convicted and sentenced to death.

### The Legal Road to Death Row

In South Africa the death penalty is mandatory for murder if a court finds there are no extenuating circumstances which lessen the "moral blameworthiness" of the trialist.<sup>3</sup> The onus is on he accused to prove extenuating circumstances, but there are no clear guidelines for what they are. Legal precedents have established that economic and social deprivation, political motivation and psychopathy are not grounds for extenuation.

Many regard the legal system as being slanted against black people. There are no black judges in South Africa and, as retired Judge Ray Leon said: "It is not easy for a white judge to put himself in the shoes of a black accused." Few black trialists can afford to pay high legal fees. Most rely on pro deo counsel who are often the most junior and inexperienced members of the Bar. While the state pays pro deo counsel for their services, it does not pay for an attorney, which means there is usually no one to assist counsel in preparing the defence. In addition, interpreters are used in most cases where white judges try black accused. A Rand Supreme Court Judge said the use of interpreters meant a judge was "one step further removed from getting to know the accused." The use of inexperienced and inadequately prepared pro deo counsel and of interpreters increases the possibility that an innocent person might be convicted of a crime.

All the people in the sample of 40 were sentenced to death for crimes involving murder. Almost half the sample (47%) were found guilty of crimes widely regarded as political, including "necklace" murders, and murders committed during mob violence and arson attacks. Most of the victims in these cases were believed to be police informers or were government-appointed officials such as township councillors. Death sentences imposed for guerrilla attacks were included in the "political" category.

Most (55%) were tried in Transvaal courts – 23% of the trials taking place in the Witwatersrand or Pretoria Supreme Courts and 32% in Circuit Courts of the province. A total of 32% of the sample stood trial in the Eastern Cape, 10% in Natal and 3% in the Western Cape.

All the trials took place before a judge of the Supreme Court and two assessors. In cases where the death penalty can be imposed it is mandatory for the judge to have two assessors sitting with him. Assessors have an equal vote when it comes to deciding the facts of the case. However, in the trial of only one man in the sample (Robert McBride) did an assessor file a dissenting report. All the judges were white and, as far as could be established, so were all the assessors. These are some of the remarks judges made about several black trialists in the sample: Acting Justice Le Roux of the Grahamstown Supreme Court said of Bennet Sonamzi, who was convicted of the murder of a Hanover councillor in 1985:

**He was a most unsatisfactory witness. He was argumentative, evasive, sometimes aggressive and he openly glared at the prosecutor and one assessor while they asked certain questions. He was also involved in long altercations with the interpreter and was exceedingly voluble. We have no difficulty in rejecting his evidence that he was not involved in the attack on the house and the killing. That he played a leading role is consistent with his attitude in the witness box and his evidence that no-one governs him.**

Rand Supreme Court judge Justice TT Spoelstra found Rodney Moloi "a very unsatisfactory witness". Moloi was convicted of having common cause with those who

"necklaced" a black policeman believed to have killed the brother of Moloi's fellow trialist. Justice Spoelstra said the murder of the policeman was:

**The deliberate hunting down of a man who may have been innocent of what he was suspected to have done by a pack of blood-thirsty wild dogs. The manner in which the deed was accomplished was so brutal, so vicious and so callous that it outweighs any extenuation or personal circumstances relevant to this case.**

A high percentage (47%) of the sample did not pay their own legal fees, because their trials were regarded as political and were funded through local and overseas church groups. However, 32% of the sample relied on a pro deo lawyer. Only 17.5% hired their own lawyer, often at considerable expense. Ismail Mokghethi paid R15 000 for his defence. Dimitrios Skoularikis' family have spent close on R900 000 in attempts to prove his innocence.

Nearly half the sample were kept in jail for the duration of the trial. Only 43% were granted bail. In many of the political cases the attorney-general issued a certificate prohibiting bail. In 85% of the cases in the sample an interpreter was used by the court.

Only one person in the sample (Pikkie van der Westhuizen who was convicted of murder and rape) was referred for psychiatric observation. There are no fixed criteria to guide the courts on whom to refer for observation. Dr Merryl Vorster in her masters degree in psychiatry (Wits, 1986) found that from 1982-1984 43.5% of those referred by the courts for psychiatric observation were white, and 48.9% were black. She found that proportionately more whites were referred than blacks, and more whites were found fit to stand for trial.

It took the courts just one day to try, convict and sentence to death 8% of the people in the sample. A total of 33% had trials which lasted less than a week; 20% of the trials lasted two to three weeks; 10% ran for four to seven weeks; 22% lasted two to three months. It is pertinent that 90% of the funded political trials lasted for more than a month. In most cases the length of a trial would indicate the thoroughness of a defence team, whether, for example, witnesses were called to challenge state evidence, to support an alibi, or to testify in mitigation of sentence. Most of the trialists (75%) gave evidence in their own defence. But only 27% called witnesses to support their versions. Witnesses were called in 37% of the funded cases, and in 29% of the pro deo cases.

Michael Bini Matli was tried and sentenced to death by the Lichtenburg Circuit Court in a trial which lasted one day, on August 26, 1988. Matli – who dismissed the pro deo lawyer appointed to represent him after the judge gave him "precisely five minutes" to decide whether he would use his services – did not give evidence in his own defence, nor in mitigation, nor did he call any witnesses. Summing up, Justice D van Zyl said:

## **The accused did not take the court into his confidence by giving evidence. In the absence of any other evidence, the court finds there was direct intent to commit murder.**

Four people in the sample (4%) were convicted on the evidence of a single witness. "Kitskonstabel" Handre Gobizizwe Ngubo, for example, was convicted of killing a man after a shebeen argument on the evidence of one man. The witness said Ngubo had shouted "Killer come here", and had opened fire on the deceased. Ngubo claimed he had acted in self defence, and that his victim had been armed with a sharpened metal pole which police found at the scene of the crime. Two people in the sample (5%) were convicted solely on the basis of circumstantial evidence and in neither case did the court establish a motive for the murder. Five percent were convicted solely on confessions made to magistrates and on the pointing out of sites to the police.

A number of people claimed police had assaulted them after their arrest, in an attempt to extract confessions from them. Burt, who was convicted on circumstantial evidence, claimed police had slapped him, forced him to strip, suffocated him with a "rubber contraption" and had applied electric shocks to the back of his thighs and genitals. Police denied his claims. Xolani Stuurman was convicted of the necklace murder of an alleged informer in Uitenhage on the basis of a confession. However, Stuurman told the court he had refused to make a confession when taken to a magistrate, and the magistrate had made a note of the assaults on his body. Stuurman said police tore up this document and threatened he would die if he didn't make a statement. About 10 days later he was taken to a magistrate in Port Elizabeth and he made a statement. The police denied threatening Stuurman. The torn-up magistrate's document was produced, but police said it had been torn up by mistake. The judge found that Stuurman's confession was admissible as evidence against him.

The controversial doctrine of common purpose was cited in the trials of 50% of the death row prisoners in the sample. In Menzi Thafeni's case, for example, Justice Solomon convicted all five accused of murdering the son of a Burgersdorp cafe owner. He said:

## **It is not necessary to show that each party did a specific act towards attainment of the joint object. Association in the common design makes the act of one the act of all. Being a member of a gang with a common intention to kill, coupled with presence at the scene of the crime, attracts liability.**

The sample indicates that lawyers generally devoted little attention to evidence on extenuating factors and mitigation of sentence – although this can mean the difference between life and death. As already mentioned the death penalty is mandatory where a court finds no extenuation. In the case of 42.5% of the sample the lawyers did not call any witnesses to support their arguments that there were factors which reduced their clients' "moral blameworthiness". In 22% of the cases trialists testified about their background, personal beliefs and other aspects deemed relevant. In several case relatives, teachers and probation officers were called to add to their testimony. In 25% of the cases expert witnesses were called – all these cases were funded. Pro deo counsel, paid about R100 a day, do not have the funds to hire

psychologists and sociologists to interview and draw up detailed reports on their clients.

Both Messina trialists, for example, testified that when they left the country their original intention had been to join the AND to further their education. But both had changed their plans and joined Umkhonto we Sizwe after they were at the receiving end of the South African commando raids into neighbouring African countries. Nondula was the sole survivor of the December 1982 raid on Lesotho. According to sociologist Dr Fatima Meer, he was saved only because he was squashed under a pile of corpses and left for dead.

Judges, however, have repeatedly pointed out that humanitarian and political considerations are not grounds for extenuation. In Menzi Thafeni's case Justice Solomon said:

**The fact that persons live in luxurious or poor conditions does not seem to us in any way to affect their rights or their duties to act as reasonable and decent human beings.**

Most of the trialists in the sample were given an opportunity to address the court before the death sentence was pronounced. Several re-asserted their innocence, others pleaded for mercy. Messina trialist Nondula spoke at length about his dissatisfaction with the hearing. He had elected not to give evidence in the trial and it was the first time the court heard him speak. He said:

**From the beginning of this case ... I have listened carefully to the court and at the end I saw the way this judge handles the case. I can't accept anymore ... (here the interpreter interrupted his translation and said: "The word used is the madness of this judge. It is said in English by the accused.") Therefore I want to tell the court whether I went to the witness box or not, it makes no difference. Because accused number one went to the witness box, he gave his side of the story to this court. Not one word uttered by him is accepted ... . If yesterday was the darkest hour, then today is the dawn that brings in the brightest day. That is all.**

Justice De Villiers gave the standard reply: "What you said has been written down and will with time be put before the executive authority." Then the court orderly asked for silence and the judge continued:

**Mthetheleli Mncube and Mzondeleli Nondula you will be taken away from here and kept in custody and on a time and place determined by the executive authority you will both be hanged by the neck until you are dead.**

More than half the people in the sample (55%) were refused leave to appeal by the trial court. Of this number 17% successfully petitioned the Chief Justice for leave to appeal. But 35% of those who petitioned were refused leave to appeal. When the report was published many were still awaiting a reply from the Chief Justice, one person (Theresa Ramashamola of the "Sharpsville Six") had had her sentence commuted to 18 years imprisonment, and at least two prisoners had been executed.

In conclusion, the sample indicated clearly that most people on death row are victims of "structural violence". A total of 85% grew up in families which struggled financially. Only 42% were raised by both parents. Of the 92% who did not complete their schooling, 54% left for financial reasons. And 85% worked as unskilled or semi-skilled labourers.

A fair proportion of people in the sample turned to crime and "reactive violence": 42% had previous convictions. Of these 47% had been prosecuted for the first time when they were juveniles. And 47% were sentenced to death for crimes many regard as politically related.

The sample highlighted several aspects of the legal process which are cause for concern. A total of 32% of the sample relied on pro deo counsel. In 85% of the cases an interpreter was used. Only 43% were granted bail. In 33% of the cases the trials lasted less than one week and in eight percent of the cases the entire proceedings lasted one day. Ten percent were convicted on the evidence of a single witness, five percent solely on circumstantial evidence and five percent solely on confessions made to magistrates and pointings out to police – in most cases trialists claimed this was done under duress. The controversial doctrine of common purpose was cited in the conviction of 50% of people in the sample. The trial court refused leave to appeal to 55% of the trialists. Of those who petitioned the Chief Justice for leave to appeal and have received replies, 17% were granted and 35% were refused leave to appeal.

For many in the sample their first taste of state violence was the sentence of half a dozen lashes imposed by a magistrate. Some experienced detention. A number claimed they were tortured by police while in custody. The institution of capital punishment, however, takes "repressive violence" to new heights.

Former death row prisoners struggle to describe the full horror of living on death row, where the lights are never switched off, with the constant presence of death. Paulos Tshehlane, who was acquitted by the Appeal Court after spending 16 months on death row, said: "Everyone is sad and worried and scared." He watched many of his cell mates leave for the execution chamber.

**When it first happened it was heavy. But as time went on I felt they were luckier than we who were left behind.**

Tshehlane said the torment was worse for those who knew they were innocent.

**These days you find that in South Africa cases are not fairly dealt with. You find that sometimes people are not guilty ... . There are some cases which you'll find where there are no**

## **eye witnesses, where statements contradict, but the accused is found guilty. This personally affected me.**

Notes:

<sup>1</sup> Pietermaritzburg Agency for Christian Social Awareness (Pasca) factsheet on capital punishment, 1988). This total does not include executions in the "independent homelands", there are gallows at Rooigrond in Bophuthatswana, Middeldrift in Ciskei, Wellington in the Transkei and Venda Central in Venda. According to Pasca, a total of 94 people were hanged in these areas between 1980 and 1986, since then figures have not been released.

<sup>2</sup> Jacklyn Cock: *Hidden Consequences of State Violence: Spinal cord injuries in Soweto*. Paper presented to the Association of Sociologists in Southern Africa, July 1988.

<sup>3</sup> The only exceptions – i.e. where the judge has a discretion – are when those on trial are younger than 18, or are women convicted of murdering their infants. Other crimes for which the death penalty may be imposed, at the discretion of the judge, are treason, rape, robbery and housebreaking with aggravating circumstances, sabotage, kidnapping and treason.